



Iowa Department of Transportation

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June 1, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N W, Room 700
Washington, D C. 20006

Re: Finance Docket No. 34177 - 216685
Iowa, Chicago and Eastern Railroad, Acquisition and Operation Exemption -
Lines of the IMRL
Finance Docket No. 34178 - 216686
Dakota, Minnesota and Eastern Railroad and Cedar American Holdings -
Control of Iowa, Chicago and Eastern Railroad.

Dear Secretary Williams:

Attached for filing are the Iowa Department of Transportation's comments to the above referenced dockets.

A copy of this filing has been provided to the Petitioner's attorney and to those on the attached service list.

If you have any questions regarding this filing, please contact John Hey, Modal Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, telephone 515-239-1653, fax 515-233-7983.

Sincerely, . . .

Nancy J. Richardson
Director

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34177

Iowa, Chicago & Eastern Railroad Corporation
Acquisition and Operation Exemption
Lines of the I&M Rail Link, LLC

Finance Docket No. 34178

Dakota, Minnesota & Eastern Railroad Corporation and Cedar America Holdings, Inc
Control of
Iowa Chicago & Eastern Railroad Corporation

**Comments of the Iowa Department of Transportation to the
Petition of Iowa, Chicago & Eastern Railroad Corporation and
Dakota, Minnesota & Eastern Railroad to
Reopen and Partially Modify Conditions**

Prepared by:
John Hey
Modal Division
Iowa Department of Transportation

Dated: June 1, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34177 and 34178

Comments and Support Statement for
Dakota, Minnesota & Eastern Railroad Corporation to Reopen but with Conditions

Introduction:

On May 12, the Chicago and Eastern Railroad Corporation (IC&E), and the Dakota, Minnesota & Eastern Railroad Corporation (DME), filed a petition to partially reopen the decisions in FD # 34177 and FD #34178, decisions related to the acquisition and control of I & M Rail Link (IMRL). The Surface Transportation Board (STB) allowed those transactions with conditions, one of which prohibited coal traffic from the Powder River Basin from using IC&E lines (the former IMRL lines) until appropriate environmental review takes place. In those proceedings, the Iowa Department of Transportation (DOT) was neither for nor against the acquisition and control of the IMRL assets by the DM&E/IC&E, (Petitioner). Our concerns centered on the appropriateness of the process and the ability of Iowa shippers and communities to become involved and be provided opportunity for appropriate relief from environmental impacts.

The Iowa DOT would like to express our conditional support for the partial reopening of the proceedings to allow the start of the environmental review process prior to the DME construction project into the Powder River Basin (PRB). However, we again raise concerns about the potential long term impacts that PRB coal traffic may have on Iowa shippers and communities. We disagree with the DM&E/IC&E assessment that the cumulative impacts "are not expected to result in any material change in the amount of such traffic that would move via the former IMRL lines." We ask the STB to place as a condition on the environmental review that the base traffic and the subsequent change in base traffic resulting from the DME PRB project will be as of today, and not as of some hypothetical construct developed by the Petitioner. We believe that Iowa communities should be provided the same opportunities for an environmental review and mitigation of impacts as Minnesota and South Dakota communities had during the Powder River Construction proceedings. Below are comments related to each of the Petitioner's requests.

I. Commencement of Environmental Review:

The Petitioner, DM&E/IC&E, has asked to be relieved of the condition to begin the environmental review at "the time of construction" and allow the environmental review to begin now. We concur. Given the anticipated schedule for the DM&E PRB construction project, there is no need to wait until actual construction begins before

starting the environmental review process on the former IMRL lines. This process should include discussions with communities concerning the mitigation of adverse impacts. The environmental review process will need sufficient data on future coal routings from the PRB over the former IMRL lines. While it may be somewhat premature, with actual traffic routings dependent on actual contract commitments from utilities, we believe reasonable forecasts and order of magnitude estimates can be made and used as a basis for environmental review. These types of estimates were made for the PRB construction project Environmental Impact Statement (EIS) and there is every reason to think they can be provided for routings over the IC&E (former IMRL) lines

II. IC&E Coal Routing Ban:

The Petitioner also requests the coal routing ban be lifted. We concur, but with conditions. The Petitioner argues the ban inhibits the financial discussions with lenders and complicates commercial transactions. That is understandable and the ban should not be a hindrance to these types of transactions. However, the argument that coal traffic being routed over the IMRL was always a part of the PRB construction plan and the ban somehow changes that status quo does not hold up. The status quo was changed by acquisition and control by the DM&E of the IMRL lines and, as such, that change necessitates the environmental review of those lines.

In the PRB construction project EIS, little or no environmental review was made on the IC&E (former IMRL) lines, with the exception of the routing and connections in Owatonna, Minnesota. At the time of the PRB construction project application by DM&E, the IMRL line in Owatonna may have been considered as an interchange point for PRB coal, however as far as we can tell there were no signed agreements with IMRL or any other railroads and hence no estimate on the number of movements over the IMRL lines. In fact, at the time of the application (and at the time of DME acquisition of the IMRL), the IMRL lines were in no condition to move significant numbers of coal trains without significant infrastructure upgrades. Also, the DME would not have had access to move increased numbers of coal trains in the Chicago area without agreements with Chicago area railroads. Such agreements were not in place. The IMRL interchange at Owatonna may also have been considered by DME as an access to the Canadian National (CN) through the Cedar River Railroad and the Chicago Central Railroad (both affiliates of CN). Other potential routings off of the Owatonna interchange could have been north or south on the Union Pacific line. In any case, consideration of these potential routings does not constitute real plans. At best they may be considered options with no real substance. The DME could not move forward with any of these options without agreements and the assistance of other railroads. But the acquisition of the IMRL lines changed all that, and that changed the status quo. As such it changed the need for an environmental review.

With control of the former IMRL lines (now IC&E), DM&E is free to route as much of the PRB coal traffic over those lines as they wish. If they wish to avoid litigation or to satisfy some city for political reasons, they could route all of the PRB coal over these

lines. Therefore, for fairness sake and to ensure appropriate review, an analysis of the environmental impacts is called for.

The Petitioner states that no coal will be routed over the IC&E lines until 2009. That's obvious since construction is expected to take until then. As such, the coal routing ban is unnecessary until then. However, the coal routing ban should be lifted only on the condition that appropriate environmental review and community mitigation agreements are completed by then.

III. Cumulative Impacts Review:

The potential routing of coal traffic from the PRB construction project is a great concern for Iowa and Iowa communities along IC&E (formerly the IMRL) lines. The DME has been granted approval of the PRB project by the STB and included in that decision was considerable environmental mitigation for communities along the DME route through South Dakota and Minnesota. One must assume that, with the acquisition of IC&E (formerly the IMRL lines) by the DME, there would be a number of potential routings for PRB coal over these lines. Iowa's concern is that these potential routings could have significant impacts (environmental, social, and economic) for communities along these lines.

The Petitioner argues that there will be little or no cumulative impacts as a result of the acquisition and control of these lines, since the former IMRL lines were already considered to be a routing option for PRB coal prior to the acquisition and control. Their argument is that since the PRB construction project was approved with the interchange with the IMRL lines and this routing, any change in ownership would have no significant bearing, except for possible increases above what had already been considered. The Petitioner goes on to state that little or no change is expected in coal traffic routings as a result of the ownership changes and, as such, there will be little or no need for an extensive environmental review. We do not agree.

The PRB coal traffic impacts on the former IMRL, (now the IC&E) and controlled by DM&E, were never analyzed as part of the PRB construction project because they were only options and not actual routings. As stated above, DM&E changed the status quo by their action of acquisition and control of the former IMRL lines. Since these lines are now controlled by DME, they are intimately related to the project and the full traffic impacts should be analyzed, not just the marginal increases that may result because of ownership changes. We believe a full environmental review should be done on the lines expected to carry increased coal traffic. As stated above, nothing prevents DM&E from changing its entire routing of PRB coal to the IC&E route. If DME, for whatever reason (too much political pressure from Minnesota cities, less costly improvements, or any other reason), decides to route traffic over these lines, Iowa communities would be left out in the cold with no recourse through any process to express their concerns.

We believe Iowa communities should be treated as fairly as Minnesota and South Dakota communities were in the PRB project decision. It is our understanding the DME, to their

credit, met with and actively worked with communities to resolve any coal traffic impact issues and agreed to provide mitigation in many instances. No less should be available for Iowa communities with no less than a full impact analysis. We do not accept that there will be no impact because there is no difference in traffic before takeover versus after takeover.

IV. Procedural Schedule:

The Petitioner requests a procedural schedule that would include a 20 day public comment period. We feel this is much too short a time for communities to respond. Most communities are not readily attuned to STB processes and many would not be prepared to respond in such a short time frame. We suggest that the DM&E be required to notify each community along the IC&E lines where they expect increased coal traffic. The notification should include a clear explanation of what they have presented in this petition and establish a time to review the railroad's plans with the community. A 60 day response by the communities to this notice would then be sufficient with appropriate time being given for the Petitioner to respond to those comments. The STB can then decide on the lifting of any conditions previously imposed as well as determine the appropriate environmental review process. As the Petitioner has indicated, there is still much time before any coal traffic will begin to move over these lines, and it is, therefore, not necessary to hurry the public in making a response to such an important matter. We hope the DM&E would take a proactive stance with the communities along these lines to complete the environmental process.

Certificate of Service

Comments by the Iowa Department of Transportation to the Petition to Reopen dockets (FD 34177 and FD 34178) by Dakota, Minnesota, and Eastern Railroad (DM&E) and the Iowa, Chicago and Eastern Railroad (IC&E) have been served upon the following Parties of Record on June 1, 2006 via first class mail

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